

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000489

07/31/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
J. Polanco
Deputy

ROBERT J HALT, et al.

MELANIE C MCKEDDIE

v.

SUNBURST FARMS EAST INC, et al.

STEPHANIE MONROE WILSON

BANK OF AMERICA N A
PO BOX 54660
CA9-705-05-07
LOS ANGELES CA 90054
ROBERT MACKENZIE
B M O HARRIS BANK N A
M & I - B M O HARRIS BANK N A
P O BOX 366
SUN PRAIRIE WI 53590-0366
DAXTON R WATSON

RULING

The parties stipulate that there remain several issues outstanding with respect to the 2007 CC&R Case [CV2008-007832] which needs clarification by this Court. As a consequence, the parties have proposed questions to the Court for which they seek responses:

- Motion for Joinder of Indispensable Parties or Alternative Motion to Dismiss. The Court granted the Motion for Joinder in its May 12, 2011 Minute Entry and deemed as moot the Alternative Motion to Dismiss. The parties have the pending questions:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000489

07/31/2013

- If the Association fails to join all parties, should its Complaint be dismissed?

§ The Court's response: Yes. As previously ruled, the Association's failure to join all necessary and indispensable parties in this action renders the complaint defective. The Complaint places at issue the validity of recorded CC&R's in the context of a declaratory judgment action. As a consequence, all homeowners in the subdivision must be joined in the action as they are all indispensable and necessary parties.¹ As it is not possible to move forward without the presence of indispensable parties, if joinder on these indispensable parties does not occur, dismissal is then appropriate.

- If joinder occurs, should the September 1, 2010 Minute Entry granting summary judgment be vacated, or do new parties join subject to this ruling as law of the case?

§ The Court's response: Yes. The prior ruling must be vacated as premature. As a consequence, the ruling will have no effect on the new parties. These indispensable parties have a legal right to substantially address the issues raised in this dispositive motion. As a consequence, the ruling is vacated with leave to the Association to re-urge the motion once all of the property owners have been joined in this action. In that manner, new parties will be afforded due process and the ultimate ruling will be uniformly applied to all property owners.

- Was the Motion for Joinder rendered moot by the September 1, 2010 Minute Entry granting summary judgment on all claims asserted in the Complaint at issue?

§ No. The Motion for Joinder of Indispensable Parties was not rendered moot. The original Motion for Joinder of Indispensable Parties or Alternative Motion to Dismiss was filed on June 4, 2008 and fully briefed as of July 9, 2008. The summary judgment motions were filed at various times in 2010 almost two years after the Motion for Joinder of Indispensable Parties was fully briefed. The parties were procedurally entitled to receive the Court's ruling on the Motion for Joinder of Indispensable Parties prior to the date these motions for summary judgment were filed. Further, the joinder of all necessary parties is a

¹ Rule 19[a]; A.R.S.12-1841; Ariz. Public Service Co. v Southern Union Gas Co., 76 Ariz. 373 [1954].
Docket Code 019 Form V000A

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000489

07/31/2013

threshold procedural issue. It should always precede a discussion of issues on the merit of the claim. In fact, the opposite is true- that is, as previously stated, the ruling on the Motion for Joinder of Indispensable Parties operates to vacate the summary judgment ruling as premature as not all homeowners were formally in the litigation at the time the summary judgment motion was decided. As these indispensable parties were not formally in the case at that time they are not bound by the Court ruling.

The Halt/Braden Parties Counterclaim - The Court's May 12, 2011 Minute Entry held that Counts One and Four of the Counterclaim should not be dismissed. The parties have the following questions:

- § The Halt/Braden parties seek clarification as to whether the May 12, 2011 Court ruling finding their Counterclaims valid, necessarily implies that the September 1, 2010 ruling has been vacated?
- This question is rendered moot by the Court's previous response. As indispensable parties were not in the case at the time the motion for summary judgment was decided it cannot operate as the law of the case. These indispensable and non-included homeowners were not in the case and all have a substantive right to address the issues raised in these motions for summary judgment. As stated, the Association is granted leave to re-urge these motions once all of the necessary parties have been included in this action. Thus, at this posture of the case, the Halt/Braden parties' counterclaims are viable.

The Halt/Braden Parties filed a Motion to Reconsider the September 1, 2010 Ruling Invalidating 2004 Settlement Agreement or Alternative Motion to Reinstate 2004 Litigation on December 15, 2010. No formal ruling was rendered on this motion by the previous judicial officer.

- Initially, this issue is rendered moot by the Court's previous ruling that the rulings on the parties 2010 motions for summary judgment were premature, in that not all indispensable parties were formally in the case and thus were not provided an opportunity to participate in the resolution of this substantive and dispositive motion. Briefly stated, the ruling invalidated a 2004 Settlement Agreement based on the Court's holding that a 2008 statute [A.R.S. 33-440] rendered the agreement unenforceable. As a consequence, the ruling validated 2007 CC&R's and dismissed a counterclaim based on breach of contract. However, as a consequence of the inapplicability of this pre-mature ruling, the current posture of the claim remains as it was before this decision was entered. As stated,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2008-000489

07/31/2013

the Association is granted leave to re-urge this motion once all indispensable parties have been included in this action. In addition, this Court in its May 12, 2011 Minute Entry adopted Special Master's Conclusions of Law Number 23 and Recommendation No. 16 which address these issues.

The Association's Form of Judgment: filed March 21, 2011. The Halt/Braden parties seek clarification regarding whether the form of Judgment entered as a consequence of the September 1, 2010 ruling has been rendered inapplicable by this Court's subsequent rulings contained in its May 12, 2011 Minute Entry.

- This question is also rendered moot by this Court's ruling that the September 1, 2010 ruling was premature as it did not include indispensable parties. As a consequence, the previously issued form of Judgment has been rendered inapplicable.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.